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**DECISION**



J. Lawrence Mil.Pers.  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-186920

DATE: January 28, 1971

MATTER OF: William McLean Tippins

- DIGEST:
1. Former Army member's debt resulting from pay and allowances paid for period of properly advanced leave which became excess leave upon discharge, and properly paid advance of pay did not arise out of "erroneous" payments and, therefore, may not be considered for waiver under 10 U.S.C. 2774 (Supp. II, 1972).
  2. Former Army member may be considered without fault for his debt which arose out of erroneous payment of basic allowance for quarters for periods records indicate he occupied Government quarters since payment was made retroactively upon member's arrival in Vietnam for period during which he served in several different training units, part of which period he occupied non-Government quarters, and during which he received change in pay entitlement. Accordingly, debt is waived under 10 U.S.C. 2774 (Supp. II, 1972).

This action is in response to a letter dated June 21, 1976, appealing the action taken by the Claims Division of this Office on June 16, 1976, denying Mr. William McLean Tippins' request for waiver of an amount he owes the United States for an advance payment of pay, excess leave, and erroneous basic allowance for quarters, incident to his service in the Army.

Mr. Tippins enlisted in the Army on May 12, 1969. He was discharged on June 14, 1970, in the grade of E-5, for the purpose of accepting appointment as a warrant officer (W-1) for an indefinite period. He was transferred to Vietnam in October 1970, transferred back to the United States in October 1971, and discharged on February 3, 1972.

During his active duty, Mr. Tippins used more leave than he accrued and, as a result, at the time of his discharge he owed the Army \$365.74 for pay and allowances he received for 15 days of excess leave. Prior to discharge \$99.99 was collected from him, leaving him in debt for \$265.75 for excess leave upon discharge.

Just prior to his return to the United States from Vietnam on September 21, 1971, Mr. Tippins was paid an advance payment of \$570, approximately 1 month's pay. Prior to his discharge, \$443.02 of the advance had been collected from him, leaving \$126.98 due upon his discharge.

Also, Mr. Tippins was credited with basic allowance for quarters (BAQ) at the "without dependents" rate from September 12, 1969, through September 29, 1970. However, the official records indicate that Mr. Tippins occupied Government quarters from February 4 through July 23, 1970, and from July 28 through August 27, 1970. Since he was not entitled to BAQ for periods during which he occupied Government quarters, he received erroneous BAQ payments totaling \$502.50.

Mr. Tippins' debt was discovered at the time of his release in February 1972, at which time, his final pay voucher shows amounts due him were set off against his debt. Refund was requested from him for the remainder of the debt at various times thereafter. Although the computation of the exact amount of the debt has changed since that time substantially reducing the amount thereof, the fact that a debt existed at the time of release has not been questioned. Pursuant to a request from Mr. Tippins received in this Office on August 14, 1974, our Claims Division considered his debt for waiver under 10 U.S.C. 2774 (Supp. II, 1972), which authorizes the waiver, under certain conditions, of debts which arise out of "erroneous" payments.

The Claims Division determined that the portion of Mr. Tippins' debt which resulted from the advance payment and the payment for advance leave which became excess leave did not arise out of "erroneous" payments since those payments were proper payments when made. Therefore, that portion of his debt could not be considered for waiver under 10 U.S.C. 2774.

Since the portion of Mr. Tippins' debt resulting from BAQ arose out of an erroneous payment, that portion was considered for waiver. However, waiver was denied on the basis that Mr. Tippins was at least partially at fault in not questioning payment of BAQ for a period in which he occupied Government quarters.

In his letter appealing that determination Mr. Tippins indicates, concerning the excess leave, that prior to going to Vietnam in September 1970, he went on a 30-day "mandatory" leave which put him in an excess leave status. Mr. Tippins' official leave record does show

B-186940

that he was on leave from August 28 to September 24, 1970. However, that was over a year and 4 months prior to his discharge, which at the rate he earned leave (2 1/2 days per month) would have been ample time to accrue leave to cover any leave used during that period. Upon his return from Vietnam Mr. Tippins took advance leave during the period September 24 to October 20, 1971, the unaccrued portion of which then became excess leave upon his discharge.

The record shows that during his active service Mr. Tippins was regularly advised of his leave status (every 3 to 6 months), which he acknowledged with his signature. In any event it appears that the leave which he was advanced which became excess upon his discharge, was properly advanced in accordance with Army Regulation: 630-5 (December 1969), Chapter 5 (change 5, September 3, 1971). Therefore, pay and allowances paid for such leave were properly paid and may not be considered for waiver under 10 U.S.C. 2774. See B-186224, August 26, 1976.

Similarly, the advance payment made to Mr. Tippins in September 1971 was a proper payment made in accordance with the applicable regulations and was being collected prior to his discharge in accordance with those regulations. See Department of Defense Military Pay and Allowances Entitlements Manual, Table 4-1-1, Rule 1, and Table 4-1-2, Rule 1. Therefore, the advance payment may not be considered for waiver under 10 U.S.C. 2774.

Accordingly, the Claims Division's determinations concerning the excess leave and the advance payment are sustained.

Concerning the \$502.50 erroneous payment of BAQ, Mr. Tippins states that he received such payment unknowingly and he points out that had the error been discovered by the Army while he was in Vietnam rather than after he was discharged, he could have repaid the erroneous amount without undue hardship. He also states in part as follows concerning his entitlement to BAQ for the periods in question:

"\* \* \* Your letter states that there is no evidence to indicate that I was entitled to BAQ during the period February 4, 1970 through August 27, 1970, except for the period July 24 to 27, 1970, when I was in transit. I vacated Government quarters at Ft. Rucker, Ala., in May of 1970 and moved off post with a statement of non-availability. I lived off post until I left Ft. Rucker on July 24, 1970 for Ft. Devens, Mass.. I was TDY at

B-186920

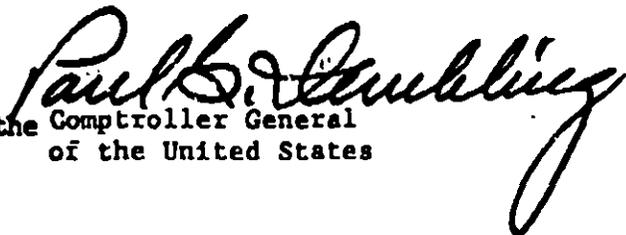
Ft. Devens from July 27, 1970 until August 27, 1970. I again lived off post with a statement of non-availability of Government housing. I left Ft. Devens on August 27, 1970 for a 30 day leave prior to going to Vietnam on September 29, 1970. \* \* \*

"At this point it should be obvious that administrative errors are the cause of the BAQ overpayment. There was no fraud, fault, misrepresentation, or lack of good faith on my part. The only thing I was guilty of was having to relocate so many times that I was thoroughly confused!"

While the records before us do not show that Mr. Tippins vacated Government quarters in May 1970, his pay records indicate that during the period of February through September 1970 he was assigned as a student to various training units at Fort Stewart, Georgia; Fort Rucker, Alabama; and Fort Devens, Massachusetts. He also received a change in basic pay entitlement in June 1970 when he was discharged from an enlisted status and appointed to a warrant officer status. In addition, the erroneous payment of BAQ was made on October 10, 1970, shortly after he arrived in Vietnam. The voucher shows that the payment was made retroactively for the entire period September 12, 1969, to September 29, 1970. At the time the erroneous payment was made, Mr. Tippins had been on active duty only about 16 months.

In view of these facts it now appears that Mr. Tippins could reasonably be expected to have been "confused" as to his BAQ entitlement and not aware that he had received an erroneous payment. Therefore, it appears that he may be considered without fault in the matter. Accordingly, the claim of the United States against Mr. Tippins in the amount of \$502.50 for the erroneous payment of BAQ is hereby waived.

The waiver of \$502.50 reduces Mr. Tippins' \$872.38 debt to \$369.88 for which he should promptly make settlement arrangements.

  
For the Comptroller General  
of the United States